

## BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Myrl L. Wieland,  
Appellant,

v.

Hall County Board of Equalization,  
Appellee.

Case No: 13R 014

Decision and Order Affirming  
County Board of Equalization

1. A Single Commissioner hearing was held on December 19, 2013, at Hamilton County Courthouse, 1111 13th , LL NE Corner, Aurora, Nebraska, before Commissioner Salmon.
2. Myrl L. Wieland (the Taxpayer) was present at the hearing.
3. Jack Zitterkopf was present for the Hall County Board of Equalization (the County).
4. The Subject Property (Subject Property) is a rural residential parcel improved with a 2,400 square foot single family dwelling, 9,000 square foot pole building, and a chicken house, with a legal description of: Lot 1, Fawnacres Eighth Sub, Center Twp, Hall County, Nebraska.

### Background

5. The Hall County Assessor assessed the Subject Property at \$260,581 for tax year 2013.
6. The Taxpayer protested this value to the Hall County Board of Equalization and requested an assessed value of \$82,473 for tax year 2013.
7. The Hall County Board of Equalization determined that the assessed value of the Subject Property was \$231,384 for tax year 2013.
8. The Taxpayer appealed the determination of the County to the Tax Equalization and Review Commission (the Commission).

### Issues & Analysis

9. The Commission's review of the determination of the County Board of Equalization is de novo.<sup>1</sup> "When an appeal is conducted as a 'trial de novo,' as opposed to a 'trial de novo on the record,' it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal."<sup>2</sup>

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<sup>1</sup> See, Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008).

<sup>2</sup> *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

10. When considering an appeal a presumption exists that the “board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action.”<sup>3</sup> That presumption “remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.”<sup>4</sup>
11. The order, decision, determination or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.<sup>5</sup>
12. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
13. A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.<sup>7</sup>
14. The Assessor stated that residences are valued using the cost approach and market sales. She stated that statistical analysis is performed and that properties are to be valued at 100% of market value.
15. The Taxpayer asserted that the Subject Property was a 2,400 square foot Astro pole building finished with one bedroom, one and three quarters bathroom, and a kitchen. It was his opinion that the market value of the Subject Property would not be the same as homes that were not finished pole buildings.
16. He stated that it cost \$86,000 to construct the residence and the 9,000 square storage pole building excluding the floor coverings, well, septic, and road. His opinion of the market value of the Subject Property was \$125,000. He asserted that the valuation had increased in 2013 from \$82,473 to \$231,384 and stated that only a chicken house had been added.
17. The Assessor stated that the cost approach had been used to value the Subject Property. She stated that the property had received a 70% functional depreciation for the previous year because it was only 30% complete. For 2013 it was assessed as 100% complete with no functional depreciation. She noted that the land value in 2013 was in error as the parcel was split from another parcel in 2012 and the land had been allocated between the two parcels. Her opinion of land value for 2013 was \$25,280. She noted that there were no similar properties in Hall County that have sold.

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<sup>3</sup> *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>4</sup> *Id.*

<sup>5</sup> Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

<sup>6</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>7</sup> Cf. *Josten-Wilbert Vault Co. v. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981)(determination of equalized taxable value).

18. The Commission finds that the County Assessor valued the Subject Property using a statutorily accepted appraisal method.<sup>8</sup>
19. The cost approach includes six steps: “(1) Estimate the land (site) value as if vacant and available for development to its highest and best use; (2) Estimate the total cost new of the improvements as of the appraisal date, including direct costs, indirect costs, and entrepreneurial profit from market analysis; (3) Estimate the total amount of accrued depreciation attributable to physical deterioration, functional obsolescence, and external (economic) obsolescence; (5) Subtract the total amount of accrued depreciation from the total cost new of the primary improvements to arrive at the depreciated cost of improvements; (5) Estimate the total cost new of any accessory improvements and site improvements, then estimate and deduct all accrued depreciation from the total cost new of these improvements; (6) Add site value to the depreciated cost of the primary improvements, accessory improvements, and site improvements, to arrive at a value indication by the cost approach.”<sup>9</sup>
20. The Commission notes that the County Assessor assigned a value of Low to the quality of construction.<sup>10</sup> The Commission also notes that the County Assessor appropriately described the exterior of the building as 100% metal/steel with Galvanized-metal roofing.<sup>11</sup> These decisions by the County Assessor effected the County Assessor’s determination of the value of the Subject Property.
21. The Taxpayer has asserted that the Subject Property would sell for less than other residences because of the type of construction and limited number of bedrooms. The Taxpayer’s assertions are best described as assertions that the Subject Property suffers from functional obsolescence.
22. Functional obsolescence is “loss in value due to inability of the improvement to perform adequately the function for which it is used, as of the appraisal date.”<sup>12</sup>
23. “Functional utility is the overall usefulness and desirability of a property. The ultimate criterion is whether the improvement efficiently satisfies the wants and needs of the market. Functional obsolescence is the loss of value in a property improvement due to changes in style, taste, technology, needs, and demands and can be curable or incurable. Functional obsolescence exists when a property suffers from poor or inappropriate architecture, lack of modern equipment, wasteful floor plans, inappropriate room sizes, inadequate heating or cooling capacity, and so on. It is the inability of a structure to perform adequately the function for which it is currently used.”<sup>13</sup>

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<sup>8</sup> See, Neb. Rev. Stat. §77-112 (Reissue 2009).

<sup>9</sup> International Association of Assessing Officers, *Property Assessment Valuation*, at 230 (3rd ed. 2010).

<sup>10</sup> See, Subject Property’s property record card.

<sup>11</sup> *Id.*

<sup>12</sup> International Association of Assessing Officers, *Property Assessment Valuation*, at 282 (3rd ed. 2010).

<sup>13</sup> International Association of Assessing Officers, *Property Assessment Valuation*, at 260-61 (3rd ed. 2010).

24. “Functional or technical obsolescence is loss in value due to lack of utility or desirability of part or all of the property, inherent to the improvement or equipment. Thus a new structure or piece of equipment may suffer obsolescence when built.”<sup>14</sup>
25. The Commission finds that the limited number of rooms, metal exterior, metal roof, and shared wall with the pole building are items of functional obsolescence because they are undesirable design features.<sup>15</sup>
26. In order to determine the amount of applicable depreciation, the Commission would need to know whether the depreciation is curable or incurable, the cost to cure, and the cost to construct the Subject Property with desirable components.<sup>16</sup>
27. The Commission finds that there was insufficient evidence presented to appropriately calculate the amount and kind of functional obsolescence attributable to the Subject Property.
28. The Commission notes that the County Assessor did not attribute any functional obsolescence to the Subject Property. The burden is on the Taxpayer to show by clear and convincing evidence that the County Board’s determination was arbitrary or unreasonable. The Commission finds that without a quantification of the functional obsolescence, there is not clear and convincing evidence that the County Board’s determination was unreasonable or arbitrary.
29. The Taxpayer asserted that the actual value of the Subject Property should be the same as the cost to construct the Subject Property five years before the date of assessment. The price to build a structure and the actual value may or may not be the same.
30. “The terms *price*, *cost*, and *value* are used and defined carefully by appraisers.”<sup>17</sup> “The term price refers to the amount a particular purchaser agrees to pay and a particular seller agrees to accept under the circumstances surrounding their transaction.”<sup>18</sup> “Actual value, market value, and fair market value mean exactly the same thing.”<sup>19</sup> Actual value is defined by Nebraska Statutes section 77-112 and means “the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market” and not the particular amount of a specific transaction.<sup>20</sup> The distinctions between *price* and *actual value* are meaningful. They acknowledge that circumstances and factors may effect a particular purchase price to such an extent that it is of limited value or irrelevant in determining the actual value of a property.
31. Additionally, the Commission notes that the price to construct the building today may be substantially more than the cost to construct the Subject Property five years ago due to general inflation and specific inflation in the cost of metals and materials.

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<sup>14</sup> Marshall & Swift/Boeckh, LLC, *Residential Cost Handbook*, at E-1 (12/2010).

<sup>15</sup> See, *Id.* at 282.

<sup>16</sup> See, *Id.* at 282-291.

<sup>17</sup> Appraisal Institute, *The Appraisal of Real Estate*, at 21 (13th ed. 2008).

<sup>18</sup> *Id.*

<sup>19</sup> *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

<sup>20</sup> Neb. Rev. Stat. §77-112 (Reissued 2009).

32. Finally, the Commission notes that while the Taxpayer asserted the cost to construct the improvements equaled actual value, the Commission was not provided with a copy of any invoices or receipts.
33. The Taxpayer has produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
34. The Taxpayer has not adduced sufficient, clear and convincing evidence that the determination of the County Board is unreasonable or arbitrary and the decision of the County Board should be affirmed.

## ORDER

### IT IS ORDERED THAT:

1. The Decision of the Hall County Board of Equalization determining the value of the Subject Property for tax year 2013, is Affirmed.
2. That the Taxable value of the Subject Property for tax year 2013 is:

Land	\$ 21,450
<u>Improvements</u>	<u>\$209,934</u>
Total	\$231,384
3. This Decision and Order, if no further action is taken, shall be certified to the Hall County Treasurer and the Hall County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2012 Cum. Supp.)
4. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
5. Each Party is to bear its own costs in this proceeding.
6. This Decision and Order shall only be applicable to tax year 2013.
7. This Decision and Order is effective on December 27, 2013.

Signed and Sealed: December 27, 2013

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Nancy J. Salmon, Commissioner